

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ERIKA THORNTON, individually and on behalf of
all others similarly situated in Missouri,

Plaintiff,

vs.

PINNACLE FOODS GROUP LLC,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Defendant Pinnacle Foods Group LLC (“Pinnacle” or “Defendant”) files this notice of removal of this action from the Circuit Court of the City of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1332(a), 1332(d), and 1441.

I. INTRODUCTION

1. This matter alleges violations of the Missouri Merchandising Practices Act (“MMPA”) and unjust enrichment in connection with the sale of Pinnacle’s Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix (the “Mix”).

2. The Petition (“Complaint” or “Compl.”) was filed in the Circuit Court of the City of St. Louis on or about January 8, 2016.

3. Plaintiff is Erika Thornton (“Thornton” or “Plaintiff”), a resident of the City of St. Louis, Missouri. (Compl. ¶ 7.)¹

¹ The Complaint incorrectly contains two paragraphs numbered 7. This refers to the first of these paragraphs.

4. Defendant is Pinnacle Foods Group LLC, a Delaware limited liability company with its principal place of business in New Jersey. (*See* Compl. ¶ 8.)²

5. Plaintiff seeks an unspecified amount of compensatory damages and costs, and attorneys' fees for herself and on behalf of a proposed class of "[a]ll persons in Missouri who purchased [the Mix] for personal, household, or family purposes in the five years preceding the filing of this Petition." (Compl. ¶ 25); (*see also* Prayer for Relief.)

6. On January 13, 2016, Pinnacle accepted service of the Complaint. A true and correct copy of all process, pleadings, orders, and other documents on file in the state court are attached hereto as **Exhibit A**.

7. In accordance with 28 U.S.C. § 1446(d), Pinnacle is filing with the state court, and serving on Plaintiff, a Notice of Filing Notice of Removal. A true and correct copy of the Notice of Filing Notice of Removal is being filed concurrently.

8. This case may be removed pursuant to 28 U.S.C. § 1332(d) as it is a proposed class action in which there is minimal diversity and the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

II. VENUE

9. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the removed action was filed in the Circuit Court of the City of St. Louis, Missouri, a court encompassed by the Eastern District of Missouri, Eastern Division.

III. REMOVAL PURSUANT TO CLASS ACTION FAIRNESS ACT OF 2005

10. Under the Class Action Fairness Act ("CAFA"), federal district courts have original jurisdiction when: (1) the putative class consists of at least 100 members; (2) the

² The Complaint incorrectly contains two paragraphs numbered 8. This refers to the first of these paragraphs.

citizenship of at least one proposed member of the class is different from that of Defendant; and
(3) the aggregated amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28
U.S.C. § 1332(d).

A. There Are More Than 100 Putative Class Members

11. Plaintiff purports to represent a class of: “All persons in Missouri who purchased [the Mix] for personal, household, or family purposes in the five years preceding the filing of this Petition.” (Compl. ¶ 25.)

12. Plaintiff admits that the proposed class consists of “hundreds of purchasers.” (Compl. ¶ 27.)

13. Consequently, there are more than 100 putative class members.

B. Minimal Diversity Exists Between the Parties

14. Upon information and belief, at the time this lawsuit was filed and at all times since, Plaintiff was and is a citizen of Missouri. (*See* Compl. ¶ 7.)³

15. At the time this lawsuit was filed and at all times since, Pinnacle Foods Group LLC was and is a limited liability company existing under the laws of Delaware, with its principal place of business in New Jersey. All of the membership interest of Pinnacle was and is owned by Pinnacle Foods Finance LLC. Pinnacle Foods Finance LLC is a limited liability company existing under the laws of Delaware with its principal place of business in New Jersey. All of the membership interest of Pinnacle Foods Finance LLC was and is owned by Peak Finance Holdings LLC. Peak Finance Holdings LLC is a limited liability company existing under the laws of Delaware with its principal place of business in New Jersey. All of the membership interest of Peak Finance Holdings LLC was and is owned by Pinnacle Foods Inc.

³ This refers to the first paragraph 7.

Pinnacle Foods Inc. is a publicly-traded Delaware corporation with its principal place of business in New Jersey. Thus, Pinnacle’s citizenship is the same as Pinnacle Foods Inc’s citizenship. Therefore, at the time this action was filed and at all times since, Pinnacle was a citizen of Delaware and New Jersey. 28 U.S.C. § 1332(c)(1).

16. Because Plaintiff is a citizen of Missouri, and Defendant is a citizen of Delaware and New Jersey, there is minimal diversity.

C. The Amount in Controversy Exceeds \$5 Million in the Aggregate

17. Under 28 U.S.C. § 1332(d)(2), an action is removable under CAFA only when “the matter in controversy exceeds the sum or value of \$5,000,000” To determine whether the matter in controversy exceeds the sum or value of \$5,000,000, “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

18. Here, the Complaint tries to plead around the \$5 million threshold by stating that the “value of Plaintiff’s claims . . . inclusive of costs and attorneys’ fees is far less than the five million dollar minimum threshold to create federal court jurisdiction” (Compl. ¶ 8.)⁴ Plaintiff, however, does not get to make this determination, because a plaintiff “who files a proposed class action cannot legally bind members of the proposed class before the class is certified.” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1349 (2013) (holding that plaintiff’s stipulation not to seek damages exceeding \$5 million “does not bind anyone but himself” and thus “has not reduced the value of the putative class members’ claims”). Nor has Plaintiff submitted any such binding stipulation. *See Bell v. Hershey Co.*, 557 F.3d 953, 958 (8th Cir. 2009).

19. For purposes of removal, Defendant needs only to make a “plausible allegation”

⁴ This refers to the second paragraph 8.

that the amount in controversy exceeds \$5 million. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). A removing defendant is no longer required to submit evidence in support of those allegations. *Id.* Once a defendant makes this showing, “the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013).

20. Assuming the truth of the allegations in the Complaint, there is more than \$5 million in controversy, as required for removal by 28 U.S.C. § 1332(d)(2).

21. Plaintiff purports to represent “[a]ll persons in Missouri” who, over the past five years, purchased the Mix, and she estimates that the proposed class consists of “hundreds of purchasers.” (Compl. ¶¶ 25, 27.)

22. Among the relief Plaintiff seeks is a “refund of the purchase price she paid for the Mix,” which she alleges was \$3.58 and which is “typical” of the price paid by all proposed class members. (Compl. ¶¶ 7-8.)⁵ The retail sales for the Mix in the State of Missouri within the past five years exceed \$630,000. This total does not include sales from certain other retailers, such as Wal-Mart, so the actual total retail sales of the Mix within the past five years is far higher than \$630,000.

23. Plaintiff also seeks attorneys’ fees in this matter. (Compl. Prayer for Relief ¶ e.) For purposes of determining whether CAFA’s \$5 million threshold has been exceeded, attorneys’ fees are included. *See Chochorowski v. Home Depot USA*, 585 F. Supp. 2d 1085, 1093 (E.D. Mo. 2008) (“Defendant is correct that in determining the amount in controversy ... attorney’s fees are considered.”).

24. Attorneys’ fees in an MMPA class action can be significant. Indeed, the Missouri

⁵ This refers to paragraphs 7 and 8 under “Jurisdiction and Venue.”

Supreme Court has affirmed attorneys' fees exceeding \$6 million on actual damages well below the more than \$630,000 in retail sales here. *Berry v. Volkswagen Grp. of America, Inc.*, 397 S.W.3d 425, 429 (Mo. banc 2013) (affirming trial court's award of \$6,174,640 in attorneys' fees under the MMPA when total payout to 130 class members was \$125,261).

25. Punitive damages may also be considered in determining whether damages exceed \$5 million under CAFA. *See Raskas*, 719 F.3d at 887. While Plaintiff does not presently seek punitive damages, Plaintiff or an intervening class member may amend the Complaint to seek punitive damages at a later date. *See Knowles*, 133 S. Ct. at 1349. Under Missouri law, punitive damages on an MMPA claim are capped at the "greater of: (1) Five hundred thousand dollars; or (2) Five times the net amount of the judgment awarded to the plaintiff against the defendant." Mo. Rev. Stat. § 510.265 (emphasis added). "[J]udgment" for purposes of calculating punitive damages includes the attorneys' fee award. *Raskas*, 719 F.3d at 887 (citing *Hervey v. Mo. Dep't of Corr.*, 379 S.W.3d 156, 165 (Mo. banc 2012)).

26. In MMPA cases, punitive damage awards are common and can be substantial. *See, e.g.:*

- *Kerr v. Ace Cash Experts, Inc.*, No. 4:10 CV 1645 DDN, 2010 WL 5177977, at *2 (E.D. Mo. Dec. 14, 2010) (considering the possibility of more than \$4.4 million in attorneys' fees and punitive damages based upon allegations of \$594,000 in actual damages);
- *Bass v. Carmax Auto Superstores, Inc.*, No. 07-0883-CV-W-ODS, 2008 WL 441962, at *2 (W.D. Mo. Feb. 14, 2008) (noting that if 4,419 Missouri class members had total actual damages of \$658,431, the "total of punitive damages and attorney fees could easily (and legally) be sufficient to bring the total

amount in controversy over the [\$5 million] jurisdictional requirement”);

- *Dowell v. Debt Relief Am., L.P.*, No. 2:07-CV-27 (JCH), 2007 WL 1876478, at *2 (E.D. Mo. June 27, 2007) (denying remand after considering two prior judgments in MMPA cases and noting that “juries are inclined to assess large punitive damages awards in MMPA cases”).

27. As a result of the volume of Mix sold over the past five years and the possibility of substantial awards of attorneys’ fees and punitive damages, the total amount in controversy exceeds \$5 million.

IV. DEFENDANT HAS COMPLIED WITH ALL PREREQUISITES FOR REMOVAL

28. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2.03, attached hereto and marked as Exhibit A is a true and correct copy of all process, pleadings, orders, and other documents on file in the state court.

29. Pursuant to 28 U.S.C. § 1446(d), promptly upon filing of this Notice of Removal, copies thereof will be sent to Plaintiff’s counsel and filed with the Clerk of the Court in the state court action.

30. Defendant reserves the right to amend or supplement this Notice of Removal, and reserve all rights and defenses, including those available under Federal Rule of Civil Procedure 12.

31. This Notice of Removal is timely because it was filed within 30 days of Defendant being served. 28 U.S.C. § 1446(b). Pinnacle accepted service of the Summons and Complaint on January 13, 2016.

WHEREFORE, Defendant Pinnacle Foods Group LLC gives notice of the removal of this action from the Circuit Court of the City of St. Louis, Missouri, to the United States District

Court for the Eastern District of Missouri, Eastern Division.

Dated: February 5, 2016

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ James P. Muehlberger
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Douglas B. Maddock, Jr., #53072MO
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*Attorneys for Defendant
Pinnacle Foods Group LLC*

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2016, the foregoing document was served upon the following via the Court's electronic filing system, electronic mail, and/or U.S. Mail, postage prepaid:

Matthew H. Armstrong
Armstrong Law Firm LLC
8816 Manchester Rd., No. 109
St. Louis MO 63144
matt@mattarmstronglaw.com

Attorney for Plaintiff

/s/ James P. Muehlberger
Attorney for Pinnacle Foods Group LLC

EXHIBIT A



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1622-CC00045 - ERIKA THORNTON V PINNACLE FOODS GROUP LLC (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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01/15/2016 **Jury Trial Scheduled**

Scheduled For: 07/18/2016; 9:00 AM ; BRYAN L HETTENBACH; City of St. Louis

01/08/2016 **Notice/Acknowledgement Issued**

Document ID: 16-NASM-4, for PINNACLE FOODS GROUP LLC.

Summons Issued-Reg/Cert Mail

Document ID: 16-SMCM-3, for PINNACLE FOODS GROUP LLC.

Filing Info Sheet eFiling

Filed By: MATTHEW HALL ARMSTRONG

Note to Clerk eFiling

Filed By: MATTHEW HALL ARMSTRONG

Pet Filed in Circuit Ct

Petition and Jury Demand; Request for Summons for Service by Mail; Entry of Appearance.

Filed By: MATTHEW HALL ARMSTRONG

On Behalf Of: ERIKA THORNTON

Judge Assigned



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1622-CC00045
Plaintiff/Petitioner: ERIKA THORNTON	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
vs.	
Defendant/Respondent: PINNACLE FOODS GROUP LLC	
Nature of Suit: CC Other Tort	(Date File Stamp)

**Notice and Acknowledgement for Service by Mail
(Circuit Division Cases)**

Notice

To: PINNACLE FOODS GROUP LLC
 C/O RAGT THE CORPORATION
 TRUST COMPANY
 1209 ORANGE STREET
 WILMINGTON, DE 19801

The enclosed summons and petition are served pursuant to Missouri Supreme Court Rule 54.16.

You may sign and date the acknowledgement part of this form and return one copy of the completed form to the sender within thirty days of 08-JAN-2016.

If you are served on behalf of a corporation, unincorporated association, including a partnership, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within thirty days, you or the party on whose behalf you are being served may be required to pay any expenses incurred in serving a summons and petition in any other manner permitted by law.

If you do complete and return this form, you or the party on whose behalf you are being served must answer the petition within thirty days of the date you sign in acknowledgment below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the petition.

I declare, under penalty of perjury, that this notice was mailed on 08-JAN-2016.

Signature

Acknowledgment of Receipt of Summons and Petition

I declare, under penalty of filing a false affidavit, that I received a copy of the Summons and of the Petition in the above captioned matter.

Date

Signature

Relationship to Entity/Authority to receive service of process



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1622-CC00045
Plaintiff/Petitioner: ERIKA THORNTON	Plaintiff's/Petitioner's Attorney/Address: MATTHEW HALL ARMSTRONG 8816 MANCHESTER RD SUITE 109 SAINT LOUIS, MO 63144
Defendant/Respondent: PINNACLE FOODS GROUP LLC	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
Nature of Suit: CC Other Tort	(Date File Stamp)

Summons for Service by Registered or Certified Mail

The State of Missouri to: PINNACLE FOODS GROUP LLC
Alias:

C/O RAGT THE CORPORATION
TRUST COMPANY
1209 ORANGE STREET
WILMINGTON, DE 19801



You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner, or Plaintiff/Petitioner, if pro se, at the above address all within 30 days after the return registered or certified mail receipt signed by you has been filed in this cause. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in the petition.

January 08, 2016
Date Issued

Thomas Kloepfinger
Clerk

Further Information:

Certificate of Mailing

I certify that on _____ (date), I mailed a copy of this summons and a copy of the petition to Defendant/Respondent PINNACLE FOODS GROUP LLC by registered or certified mail, requesting a return receipt by the addressee only, to the said Defendant/Respondent at the address furnished by Plaintiff/Petitioner.

Date

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI

ERIKA THORNTON, individually and on)
on behalf of all others similarly situated in)
Missouri,)

Plaintiff,)

No. _____)

v.)

PINNACLE FOODS GROUP LLC,)

JURY TRIAL DEMANDED

Defendant.)

Serve by Mail:)

Pinnacle Foods Group LLC)
c/o The Corporation Trust Company RAGT)
1209 Orange Street)
Wilmington DE 19801)

PETITION

Plaintiff, Erika Thornton, individually and on behalf of all others similarly situated in Missouri, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

CASE SUMMARY

1. This case arises out of Defendant Pinnacle Food Group LLC’s (“Pinnacle” or “Defendant”) deceptive, unfair, and false merchandising practices regarding its Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix (the “Mix”).

2. On the label of the Mix, Defendant prominently represents that the Mix contains “Nothing Artificial.”

3. The Mix, however, contains Monocalcium Phosphate and Xanthan Gum (the “Artificial Ingredients”), both of which are artificial, synthetic substances.

4. Because the Mix contains the Artificial Ingredients, the representation that the Mix contains “Nothing Artificial” is false, deceptive, and misleading.

5. The “Nothing Artificial” label on the Mix also creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Mix does not contain any artificial, synthetic ingredients, when in fact the Mix contains the Artificial Ingredients. Moreover, the overall format and appearance of the label of the Mix has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Mix does not contain any artificial, synthetic ingredients.

6. Plaintiff brings this case to recover damages for Defendant’s false, deceptive, and misleading marketing and advertising in violation of the Missouri Merchandising Practices Act (“MMPA”) and Missouri common law.

PARTIES

7. Plaintiff, Erika Thornton, is a resident of the City of St. Louis, Missouri. On at least one occasion during the Class Period (as defined below), including in January 2016, Plaintiff purchased the Mix at Schnucks for personal, family, or household purposes. The purchase price of the Mix was \$3.58. Plaintiff’s claim is typical of all class members in this regard.

8. Defendant Pinnacle Foods Group LLC is a Delaware LLC with its principal place of business at 399 Jefferson Rd, Parsippany, NJ 07054.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

7. Plaintiff believes and alleges that the total value of her individual claims is, at most, equal to the refund of the purchase price she paid for the Mix, or \$3.58.

8. Because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five million dollar (\$5,000,000) minimum threshold to create federal court jurisdiction.

9. There is therefore no diversity or CAFA jurisdiction for this case.

10. Defendant cannot plausibly allege that it had sufficient sales of the Mix in Missouri during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

11. This Court has personal jurisdiction over Defendant pursuant to Missouri Code § 506.500, as Defendant has had more than minimum contacts with the State of Missouri and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that gives rise to civil liability, including distributing the fraudulent Mix for sale throughout the State of Missouri.

12. Venue is proper in this forum pursuant to Missouri Code § 508.010 because plaintiff's injury occurred in the City of St. Louis and because Defendant is not a resident of this State.

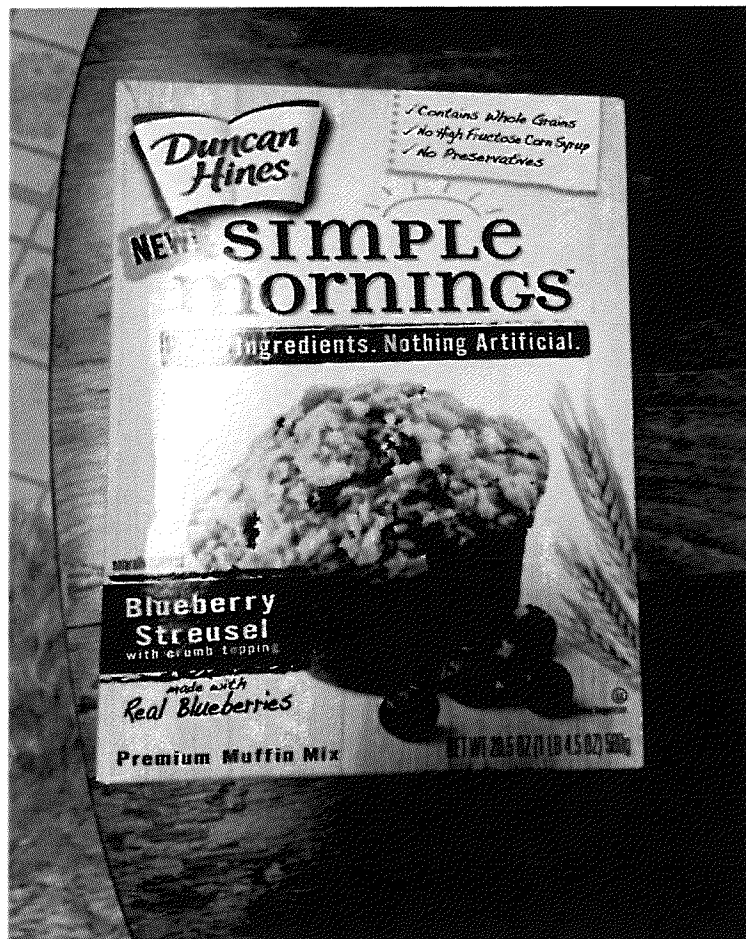
13. Plaintiff and Class Members do not seek to recover punitive damages or statutory penalties in this case.

ALLEGATIONS OF FACT

14. Defendant manufactures, sells, and distributes baking products, including the Mix.

15. Knowing that consumers like Plaintiff are increasingly interested in purchasing healthy food products that do not contain potentially harmful artificial and synthetic ingredients, Defendant has sought to take advantage of this growing market by labeling certain products as containing “Nothing Artificial.” By affixing such a label to the packaging of the Mix, Defendant is able to entice consumers like Plaintiff to pay a premium for the product.

16. The label of the Mix is deceptive, false, and misleading in that Defendant prominently represents that the Mix contains “Nothing Artificial.”



17. The Mix, however, in fact contains artificial and synthetic ingredients, including the Artificial Ingredients.

18. Monocalcium Phosphate is an inorganic compound that is used as a fertilizer and as a leavening agent. It is manufactured by treating calcium hydroxide with phosphoric acid. 7 C.F.R. 205.605(b) identifies Monocalcium Phosphate as a synthetic substance.

19. Xanthan Gum is a polysaccharide that is produced industrially from carbon sources by fermentation of bacteria. It is used as a food-thickening agent. It can also be used to thicken oil drilling mud. 7 C.F.R. 205.605(b) identifies Xanthan Gum as a synthetic substance.

20. Neither Plaintiff nor any reasonable consumer would expect to find artificial, synthetic ingredients in a product labeled as containing “Nothing Artificial.”

21. Neither Plaintiff nor any reasonable consumer would know nor should know that Monocalcium Phosphate and Xanthan Gum are artificial, synthetic ingredients.

22. As a result of Defendant’s deceitful label, Defendant was able to charge and Plaintiff paid a premium for the mix.

23. The Mix, moreover, was worth less than it was represented to be, and Plaintiff and Class Members paid extra for it due to the “Nothing Artificial” label.

24. Defendant’s misrepresentations violate the MMPA’s prohibition of the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

CLASS ALLEGATIONS

25. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons (“Class Members” of the “Class”) consisting of:

All persons in Missouri who purchased Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix for personal, household, or family purposes in the five years preceding the filing of this Petition (the “Class Period”).

26. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

27. Upon information and belief, the Class consists of hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

28. There are numerous and substantial questions of law or fact common to all of the members of the Class and which predominate over any individual issues. Included within the common question of law or fact are:

a. Whether the “Nothing Artificial” claim on the product’s label is false, misleading, and deceptive;

b. Whether Defendant violated the MMPA by selling the Mix with false, misleading, and deceptive representations;

- c. Whether Defendant's acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. Whether Defendant was unjustly enriched; and
- e. The proper measure of damages sustained by Plaintiff and Class Members.

29. The claims of the Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

30. Plaintiff will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

31. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have

no substantial interest in individually controlling the prosecution of individual actions;

- d. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

32. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

33. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

Count I

Violation of Missouri's Merchandising Practices Act

30. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

31. Missouri's Merchandising Practices Act (the "MMPA") prohibits the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce § 407.020, RSMo.

32. Defendant's conduct constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce because Defendant misrepresents that the Mix contains "Nothing Artificial" when it in fact contains the Artificial Ingredients.

33. The "Nothing Artificial" label on the Mix also creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Mix does not contain any artificial, synthetic ingredients, when in fact the Mix contains the Artificial Ingredients.

34. Moreover, the overall format and appearance of the label of the Mix has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Mix does not contain any artificial, synthetic ingredients.

35. The product was therefore worth less than the product as represented, and Plaintiff and Class Members paid extra or a premium for it.

36. Neither Plaintiff nor any reasonable consumer would expect synthetic and artificial ingredients to be in a product labeled as containing "Nothing Artificial."

37. Neither Plaintiff nor any reasonable consumer would know nor should know that Monocalcium Phosphate and Xanthan Gum are artificial, synthetic ingredients.

38. Plaintiff and Class Members purchased the Mix for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the product and the value of the product if it had been as represented.

39. Defendant's unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

Count II

Unjust Enrichment

40. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

41. By purchasing the Mix, Plaintiff and the class members conferred a benefit on Defendant in the form of the purchase price of the fraudulent product.

42. Defendant appreciated the benefit because, were consumers not to purchase the Mix, Defendant would have no sales and make no money.

43. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations about the Mix.

44. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class, or, alternatively, require Defendant to disgorge or pay restitution of its ill-gotten gains;
- d. Award pre- and post-judgment interest;
- e. Award reasonable and necessary attorneys' fees and costs; and
- g. For all such other and further relief as may be just and proper.

Dated: January 8, 2016

Erika Thornton, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

By: /s/ Matthew H. Armstrong
Matthew H. Armstrong (MoBar 42803)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis MO 63144
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Attorneys for Plaintiff and the Putative Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Erika Thornton, individually)	
and on behalf of all others)	
similarly situated in Missouri, ')	
)	
Plaintiff,)	
)	
v.)	Case No.
Pinnacle Foods Group)	
LLC,)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____.

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 02/04/2016

/s/ James P. Muehlberger
Signature of Filing Party

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Erika Thornton, individually and on behalf of all others similarly situated in Missouri.

(b) County of Residence of First Listed Plaintiff St. Louis City (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew H. Armstrong
Armstrong Law Firm LLC, 8816 Manchester Rd., No. 109, St. Louis, MO 63144, Phone: (314) 258-0212

DEFENDANTS

Pinnacle Foods Group LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

James P. Muehlberger, Douglas B. Maddock, Jr., Shook, Hardy & Bacon L.L.P., 2555 Grand Blvd., Kansas City, MO 64108, Phone: (816) 474-6550

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332(a), 1332(d), and 1441
Brief description of cause: Violations of the Missouri Merchandising Practices Act and unjust enrichment.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/05/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ James P. Muehlberger

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.